

IN THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, PRETORIA)

CASE NO: 17890/2010

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
(4)	Signature: <i>[Signature]</i> Date: 13/03/2017

13/3/2017

INVESTEC BANK LIMITED

APPLICANT

and

ANTHEA PHOEBE-JANE VAN HEERDEN

1ST RESPONDENT

IZAK ALBERTUS VAN HEERDEN

2ND RESPONDENT

AFRIKINGS (PTY) LTD

3RD RESPONDENT

NEW INVEST 263 (PTY) LTD

4TH RESPONDENT

JUDGMENT

KHUMALO J

INTRODUCTION

[1] This is an application for Judgment in terms of Rule 31 of the High Court Rules. The Applicant is reliant upon a confession of Judgment that was signed by the 1st, 2nd and 4th Respondents on 17 March 2014 pursuant Applicant instituting an action against them in 2010.

[2] The Respondents were assisted by their attorney a Mr A J Benecke ("Benecke"), who also appended his signature on the confession document. Paragraph 5 of the confession reads:

"We agree that should we default in respect of any of the obligations of the Defendants to the Plaintiff, as set out herein, such default shall be certified by a Manager of the Plaintiff and in that event the Plaintiff shall be entitled to apply in writing through the Registrar to a Judge for judgment to be granted according to this confession for the full outstanding balance then due and payable as applicable, **if the Plaintiff has given notice in writing of such application for judgment to our attorney of record whose particulars appear hereunder and the amount remains unpaid for seven (7) days.**"

[3] The Applicant attaches a supporting affidavit deposed to by a Ms N B Moatshe, the Applicant's attorney of record alleging that the attorney who witnessed the signatures of the Defendants is Bennecke of the firm Hills Incorporated acting on behalf of the Respondents. To substantiate the allegation a Notice of Intention to defend the action delivered by the Respondents in the matter is attached as Annexure "B".

[4] In terms of Annexure "B" signed on 3 May 2010, the Respondents appointed Gerhard Botha & Partners Inc as their attorneys of record, Care/of S Roux Inc who are situated at office 2/201, Office Park no 2 Top Floor, Cnr Oliphant's & Steenbok Streets, Monument Park in Pretoria. A J Bennecke/ Ilr/HJ264/10 is mentioned as a reference. There is no Notice of withdrawal by Gerhard Botha & Partners or a Notice of Appointment by Hills Incorporated not been .

[5] The Applicant has given notice of its Application to Attorneys Hills Incorporated who are situated at 835 Jan Shoba Street, Brooklyn, Pretoria, reference A J Bennecke/idb/JB210/12 without any explanation.

[6] As a result the Application cannot be considered until there is compliance with the terms of the confession.



**N V KHUMALO J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the Applicant:

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